

FCC MAIL SECTION

Federal Communications Commission

DA 98-2023

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DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-107
Table of Allotments,)	RM-9288
FM Broadcast Stations.)	
(Gaylord, Michigan))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 30, 1998

Released: October 9, 1998

By the Chief, Allocations Branch:

1. In response to a petition filed by Darby Advertising, Inc. ("Darby"), the Commission has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 12595 (1998), seeking the substitution of Channel 268A for Channel 237A at Gaylord, Michigan. Darby also requested modification of its license for Station WMJZ to specify operation on Channel 268A in lieu of Channel 237A. Darby filed supporting comments in which it reaffirmed its interest in Channel 268A. Northern Christian Radio, Inc. ("NCR") filed comments and a counterproposal.¹

2. Darby filed reply comments restating its request to substitute Channel 268A for Channel 237A at Gaylord to allow it to operate at six kilowatts and to eliminate the short spacing that exists between Station WMJZ and the allotment of Channel 238 at Sault Ste. Marie, Ontario, Canada. In response to the comments filed by NCR, Darby contends that Channel 250A could be allotted to Gaylord for other interested parties while reserving Channel 268A for

¹ NCR, licensee of FM Station WHPN, Gaylord, Michigan, filed a pleading styled as a counterproposal requesting that Channel 268A at Gaylord, Michigan, be reserved for noncommercial educational use. According to NCR, there are no noncommercial channels available for allotment at Gaylord and the only way to provide alternative noncommercial educational programming is to reserve a commercial channel for educational use. We have not accepted NCR's counterproposal as the filing represents an expression of interest or an alternate use of the channel rather than introducing a new community or proposing a higher class allotment than was proposed in the Notice. See Clinton, Saint Pauls and Southern Pines, North Carolina and Chesterfield, South Carolina, 6 FCC Rcd 4370 (1991). While NCR indicates that Channel 268A is the only channel that can be allotted to Gaylord, our engineering analysis indicates that Channel 250A could be allotted to Gaylord as a commercial channel. Our analysis further indicates that a sufficient showing has not been made to justify reserving the channel. Therefore, since the only interest we have in an additional channel at Gaylord comes from NCR who has specifically stated its interest in the reservation of a channel for noncommercial educational programming, we will not allot an additional channel at Gaylord.

Station WMJZ. Darby also points out that there is no basis for allotting an additional channel on a non-reserved basis to Gaylord as no other parties have committed to filing an application for a construction permit for the station.

3. After a review of the comments filed in this proceeding, we conclude that the public interest will be served by the substitution of Channel 268A for Channel 237A at Gaylord, Michigan, since it will provide improved service to the community. Channel 268A can be allotted to Gaylord in compliance with the Commission's minimum distance separation requirements at Darby's specified site.² Since Gaylord is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. In accordance with Darby's request, we shall modify its license to specify operation on Channel 268A. The procedures outlined in Modification of FM & TV Licenses, 98 FCC 2nd 916 (1984), and Section 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated. We believe Channel 268A is equivalent to Channel 237A at Gaylord for allotment purposes. We consider channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 23, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

Community	Channel Number
Gaylord, Michigan	268A, 294C1

5. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WMJZ, IS MODIFIED, to specify operation on Channel 268A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-860327KD expect for the channel as specified above. Any changes, except those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).

² The coordinates for Channel 268A at Gaylord are 45-01-33 and 84-39-40.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-860327KD, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 268A at Gaylord, Michigan, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau